

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal From: Kingsley Okereke
Dept: City Manager Dept: Public Works
Subject: APPROVING AN AGREEMENT RE DEVELOPMENT AND OPERATING COVENANTS BY AND BETWEEN THE CITY OF GARDEN GROVE AND GARDEN GROVE MXD, INC.; MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH INCLUDING A DETERMINATION THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED; AND AUTHORIZING THE EXECUTION AND IMPLEMENTATION OF SAID AGREEMENT RE DEVELOPMENT AND OPERATING COVENANTS (PUBLIC HEARING) Date: November 25, 2014

OBJECTIVE

To conduct a Public Hearing to consider the approval of the a Resolution approving an Agreement Re Development and Operating Covenants (the "Agreement") by and between the City of Garden Grove and Garden Grove MXD, Inc. (the "Developer"); making certain findings in connection therewith; and authorizing the execution and implementation of the Agreement.

BACKGROUND

The Garden Grove Agency for Community Development (now, the "Successor Agency") and Developer entered into that certain First Amended and Restated Disposition and Development Agreement dated April 13, 2010 ("DDA") for the construction of approximately six hundred (600) rooms and a water park (the "Water Park Hotel" or "Hotel"), approximately 18,000 square feet of retail, including one or more restaurants, and a parking structure.

The DDA was further implemented by that certain Implementation Agreement dated October 8, 2013 (together, the "DDA, as Implemented").

DISCUSSION

Pursuant to the DDA, as Implemented, the Successor Agency is obligated, among other things, to pay to GGMXD the sum of Forty-Two Million Dollars (\$42,000,000) (the "DDA Payment") thirty (30) days following the later to occur of the date on which (i) the Water Park Hotel Opens for Business, or (ii) the Certificate of Occupancy (as defined in the DDA) is issued for the Water Park Hotel. The DDA, as implemented further provides that the

Successor Agency shall issue its tax allocation bonds to make the DDA Payment. If the Successor Agency is unable to issue tax allocation bonds to make the DDA Payment, in full, the Successor Agency is required to issue a note to the Developer (the "Note") evidencing the obligations to pay the balance of the DDA Payment not paid from the proceeds of the tax allocation bonds, plus interest at a rate equal to the yield of tax allocation bonds pursuant to a Note.

In the event the Successor Agency is prohibited from issuing the Note or Available Agency Revenues are not available to make all required debt service payments under the Note, the purpose of the Agreement is to insure the DDA Payment in return for which the Developer is covenanting to operate the Water Park Hotel for twenty (20) years.

FISCAL IMPACT

Total revenues to be generated by the Water Park Hotel are estimated to be approximately Eight Million Dollars (\$8,000,000). The City's commitment under the Agreement is estimated to be between \$0 and \$4,000,000 per annum depending on the funds available to the Successor Agency to make the DDA Payment. Attached is a report from Horwath HTL describing the economic terms in more detail.

FINDINGS

The City has determined, based upon substantial evidence provided in the record before it, that (a) the Agreement is a development agreement that will increase property tax revenues to all property tax collecting entities; (b) the implementation of the Agreement will result in an increase of at least 15 percent of total property tax resulting from the Water Park Hotel at full implementation when compared to the year prior to the year in which the Former Agency acquired the Property; (c) implementation of the Agreement will promote the public peace, health, safety, and welfare of the City and its residents; (d) the consideration described in the Agreement is reasonably necessary to ensure the development, opening, and operation of the Water Park Hotel; and (e) approximately 800-1000 construction jobs and 600 full time jobs will be created.

ENVIRONMENTAL

No further environmental review under the California Environmental Quality Act ("CEQA") is required in conjunction with this Agreement. The City, as lead agency, previously prepared a Mitigated Negative Declaration ("MND") that analyzed the potential environmental impacts of the development and operation of the Water Park Hotel. The MND is entitled "City of Garden Grove Water Park Hotel Mitigated Negative Declaration." The City adopted the MND on February 8, 2011. The City filed a Notice of Determination on February 9, 2011. There are no substantial changes in the project, substantial changes with respect to the circumstances under which the project is being undertaken, or any new information which was not known and could not have been known at the time the MND was adopted showing that: (1) the project will have any new significant effects; (2) significant effects previously examined will be substantially more severe; (3) mitigation measures previously determined to be infeasible will now be feasible and would substantially reduce one or more significant effects of the project; or (4) mitigation

measures considerably different from those previously analyzed would substantially reduce one or more significant effects on the environment. Accordingly, in accordance with CEQA Section 21166 and 15162 of the CEQA Guidelines, no further environmental review is required prior to approval of the Agreement.

RECOMMENDATION

It is recommended that the City Council:

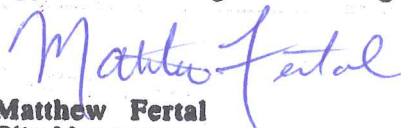
- Conduct the Public Hearing; and
- Adopt the attached Resolution approving an Agreement Re Development and Operating Covenants by and between the City of Garden Grove and Garden Grove MXD, Inc.; making certain findings in connection therewith; and authorizing the execution and implementation of the Agreement Re Development and Operating Covenants.

KINGSLEY OKEREKE
Assistant City Manager


By: Greg Blodgett
Sr. Project Manager

Attachment 1: City Resolution
Attachment 2: City Agreement
Attachment 3: Project Reuse Report

Approved for Agenda Listing


Matthew Fertal
City Manager

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING AN AGREEMENT RE DEVELOPMENT AND OPERATING COVENANTS BY AND BETWEEN THE CITY OF GARDEN GROVE AND GARDEN GROVE MXD, INC.; MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH; AND AUTHORIZING THE EXECUTION AND IMPLEMENTATION OF SAID AGREEMENT RE DEVELOPMENT AND OPERATING COVENANTS

WHEREAS, the City of Garden Grove ("City") is a California municipal corporation;

WHEREAS, Garden Grove MXD, Inc., a Colorado corporation (the "Developer") and the Garden Grove Agency for Community Development (the "Former Agency") entered into that certain First Amended and Restated Development and Disposition Agreement dated April 13, 2010 ("DDA") as the same has been assigned in part to GGMXDR, Inc., a Colorado corporation ("GGMXDR") and GWGG, LLC, a Delaware limited liability company ("GWGG"). The Former Agency was succeeded by the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development pursuant to the Health & Safety Code Section 34161 *et seq.* ("Successor Agency"). The Developer and the Successor Agency entered into that certain Implementation Agreement dated October 8, 2013 to further implement the DDA ("Implementation Agreement"). The DDA and Implementation Agreement are sometimes collectively referred to herein as the "DDA, as Implemented";

WHEREAS, the Developer has proposed development of the property conveyed to it by the Former Agency pursuant to the DDA, as Implemented (the "Property"), generally consisting of a combination of a hotel, retail, restaurant, and entertainment venues, and related parking facilities, as further defined in the DDA, as Implemented, but which shall include, generally, a water park hotel facility consisting of an approximately 603 room hotel, and an approximately 3-acre water park ("Water Park Hotel") as well as approximately 40,000 square feet of retail, restaurants and

entertainment uses included on the Site and related parking (together with the Water Park Hotel, the "Project");

WHEREAS, the City wishes to insure construction, opening and continued operation of the Water Park Hotel for at least twenty (20) years;

WHEREAS, the Developer desires to provide covenants assuring the completion, opening, and continuous operation of the Water Park Hotel for a period of twenty (20) years (together, the "Covenants"), in return for certain consideration (the "Consideration") to be paid by the City;

WHEREAS, City desires to pay the Consideration to Developer in the amount as set forth in the Agreement Re Development and Operating Covenants ("Agreement") which Agreement provides for the conveyance of the Covenants and the payment of the Consideration;

WHEREAS, City has authority to enter into the Agreement and provide the Consideration pursuant to Government Code Section 52200, *et seq.*;

WHEREAS, pursuant to Government Code Section 52200.4, the California legislature has declared that "the creation of economic opportunity and the provisions for appropriate continuing land use and construction policies with respect to property acquired, in whole or in part, for economic opportunity constitute public uses and purposes for which public money may be advanced or expended and private property acquired";

WHEREAS, pursuant to Government Code Section 52200.2, "economic opportunity" includes "development agreements that increase property tax revenues to all property tax collecting entities";

WHEREAS, the City Council finds that the Agreement is a development agreement which will result in an increase of at least 15 percent of total property tax resulting from the Water Park Hotel at full implementation when compared to the year prior to the Property being acquired by the Former Agency;

WHEREAS, the City (i) made the information required by Government Code Section 53083(a) available to the public in written form and on the City's website and (ii) held a noticed public hearing regarding the Agreement and City's obligation therein to pay the Consideration as required by Government Code Section 53083(b); and

WHEREAS, the City has duly considered all terms and conditions of the proposed Agreement and believes that development of the Site and operation of the Water Park Hotel thereon pursuant to the Agreement and the DDA, as Implemented is in the vital and best interest of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable requirements of State and local law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AS FOLLOWS:

1. The City Council hereby finds and determines that the recitals set forth above are true and correct and are incorporated herein by reference as if set forth in full.

2. The City Council hereby finds and determines, based upon substantial evidence provided in the record before it, that (a) the Agreement is a development agreement that will increase property tax revenues to all property tax collecting entities; (b) the implementation of the Agreement will result in an increase of at least 15 percent of total property tax resulting from the Water Park Hotel at full implementation when compared to the year prior to the year in which the Former Agency acquired the Property; (c) implementation of the Agreement will promote the public peace, health, safety, and welfare of the City and its residents; and (d) the Consideration described in the Agreement is reasonably necessary to ensure the development, opening, and operation of the Water Park Hotel.

3. The City Council hereby finds and determines, based upon substantial evidence provided in the record before it that the Former Agency as Lead Agency and

the City as Responsible Agency complied with the applicable requirements of CEQA with respect to the development and operation of the Water Park Hotel. The City Council further finds and determines that no additional environmental review is required.

4. The City Council hereby finds and determines, based upon substantial evidence provided in the record before it, that development of the Water Park Hotel will be of material benefit to the City and to the citizens of, and property owners in the City and surrounding areas, because the construction and operation of the Water Park Hotel will eliminate various conditions of blight existing in the City; ensure that the causes of blighting conditions will be either eliminated or protected against; encourage and foster the economic revitalization of the City for the people in the area and the general public as a whole; increase property tax available to the City and other taxing entities; increase sales tax and transient occupancy tax revenues available to the City; and create jobs within the City.

5. The City Council hereby authorizes execution of the Agreement by the Mayor.

Adopted this _____ day of _____, 2014.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Special Counsel

**RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:**

City of Garden Grove
12222 Acacia Parkway
Garden Grove, California 92840
Attn: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Projects 6103 and 27383.

AGREEMENT RE DEVELOPMENT AND OPERATING COVENANTS

This AGREEMENT RE DEVELOPMENT AND OPERATING COVENANTS (“**Agreement**”) is made as of _____, 2014 (“**Date of Agreement**”), by and among the CITY OF GARDEN GROVE, a California municipal corporation (“**City**”) and GARDEN GROVE MXD, INC., a Colorado corporation (“**GGMXD**” or “**Developer**”), or any approved affiliate, assignee or successor thereto permitted pursuant to the terms of this Agreement and the DDA, as Implemented, defined herein), with reference to the following:

A. The Developer and the Garden Grove Agency for Community Development (succeeded by the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development (“**Successor Agency**”) pursuant to the Dissolution Act, defined below), entered into that certain First Amended and Restated Development and Disposition Agreement dated April 13, 2010 (“**DDA**”) as the same has been assigned in part to GGMXDR, Inc., a Colorado corporation (“**GGMXDR**”) and GWGG, LLC, a Delaware limited liability company (“**GWGG**”). GGMXD and Successor Agency entered into that certain Implementation Agreement dated October 8, 2013 to further implement the DDA (“**Implementation Agreement**”). The DDA and Implementation Agreement are sometimes collectively referred to herein as the “**DDA, as Implemented.**”

B. The Site Map and Legal Description of the property which is the subject of the DDA, as Implemented and this Agreement are attached hereto as Exhibits A and B, respectively, and are incorporated herein by reference; such property shall be referred to herein as the “**Site.**” A portion of the Site was transferred directly to GGMXDR and the remainder of the Site was transferred to GGMXD and then eventually to GWGG on March 21, 2014.

C. The Developer has proposed development for the Site generally consisting of a combination of a hotel, retail, restaurant, and entertainment venues, and related parking facilities,

as further defined in the DDA but which shall include, generally, a water park hotel facility consisting of an approximately 603 room hotel, and an approximately 3 acre water park (“**Water Park Hotel**”) as well as approximately 40,000 square feet of retail, restaurants and entertainment uses included on the Site and related parking (together with the Water Park Hotel, the “**Project**”).

D. The initial phase of the Project is more specifically described in the Construction Drawings and related permit for the foundations and underground construction, as approved by the City on February 28, 2014 (“**Initial Construction Drawings**”) and the Planned Unit Development No. PUD 126-10 previously approved by the City pursuant to Ordinance No. 2789 (“**PUD**”). The City has also approved General Plan Amendment GPA 1-10(A) (“**GPA**”), Development Agreement No. DA-183-10 (“**DA**”) and a Mitigated Negative Declaration and Mitigation Monitoring Program for the Project pursuant to City Resolution No. 9028-11 (“**MND**”). The Planning Commission has approved Conditional Use Permit No. CUP-303-10 (“**CUP**”) and Tentative Parcel Map No. PM-2010-1178 (“**TPM**”). The DDA, Initial Construction Drawings, GPA, CUP, PUD, DA, and MND are collectively referred to herein as the “**Entitlements**.”

E. The City wishes to insure construction, opening, and continued operation of the Project for at least twenty (20) years. In return for the City Payments (defined below), Developer desires to provide a covenant to the City assuring the construction, opening and continuous operation of the Water Park Hotel for a period of twenty (20) years.

NOW, THEREFORE, the parties hereby agree, as follows:

1. Definitions.

“**Agreement**” means this Agreement Re Development and Operating Covenants dated _____, 2014, including all exhibits.

“**Available Agency Revenues**” is defined in the DDA, as Implemented.

“**Breach**” is defined in Section 5.

“**City Payment**” is defined in Section 4.

“**Construction Costs**” means the actual and direct third party construction costs for the building comprising the Water Park Hotel, excluding the Parking Structure and Furniture, Fixtures and Equipment.

“**CUP**” is defined in Recital D.

“**DA**” is defined in Recital D.

“**DDA**” is defined in Recital A.

“**DDA, as Implemented**” is defined in Recital A.

“DDA Payment” is defined in Section 4.

“Default” is defined in Section 5.

“Dissolution Act” means Parts 1.8 (commencing with Section 34161) and 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code of the State of California.

“Entitlements” is defined in Recital D.

“Environmental Laws” mean all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*, the Hazardous Substance Account Act, California Health and Safety Code § 25300, *et seq.*, the Hazardous Waste Control Law, California Health and Safety Code § 25100, *et seq.*, and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, *et seq.*

“Furniture, Fixtures and Equipment” means movable furniture, fixtures or other equipment that have no permanent connection to the structure of a building or utilities within the Water Park Hotel, as well as operational supplies. More specifically, furniture, fixtures and/or equipment would include decorative items, window treatments, casework, furnishings and accessories, furniture, data communications equipment, voice communications equipment, audio visual communications equipment, electronic surveillance equipment, electronic detection and alarm equipment, commercial equipment, foodservice equipment, entertainment equipment, athletic and recreational equipment, and collection and disposal equipment. Operational supplies include all supplies needed for the operation of the hotel, such as stationery, computer equipment and accessories, guestroom TV’s and mounts, alarm clocks in rooms, linen, pillows, maids’ carts and supplies, trash cans, all items for the hotel restaurant, bar, banquet and conference facilities (including china, utensils, glasses, etc.).

“Governmental Requirement(s)” means the Environmental Laws, all applicable state labor and work safety laws and regulations, including, to the extent applicable, the provisions of the state labor and work safety laws and regulations, including to the extent applicable, the provisions of Labor Code Sections 1770 *et seq.*, prevailing wage requirements, the building, plumbing, mechanical and electrical codes, and all other applicable provisions of the City’s Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and the Unruh Civil Rights Act, California Civil Code Sections 51, *et seq.*

“GPA” is defined in Recital D.

“Implementation Agreement” is defined in Recital A.

“Initial Construction Drawings” is defined in Recital D.

“**MND**” is defined in Recital D.

“**Note**” means the Note attached to the Implementation Agreement as Exhibit B.

“**Notice**” is defined in Section 11(a).

“**Open for Business**” is defined in the DDA.

“**Operating Period**” is defined in Section 4(a)(i).

“**Parking Structure**” means the multi-level parking structure consisting of approximately 1200 parking spaces serving the Project.

“**Project**” is defined in Recital C.

“**Project Area**” means the property within the geographical boundaries of the Redevelopment Plan as described in the Redevelopment Plan.

“**PUD**” is defined in Recital D.

“**Recorded CC&Rs**” means the Declaration of Covenants, Conditions, Operation and Reciprocal Easements recorded in the Official Records of Orange County, on March 21, 2014, as Instrument No. 2014000108140.

“**Redevelopment Law**” means Health & Safety Code Section 33000 *et seq.*

“**Redevelopment Plan**” means the Redevelopment Plan for the Garden Grove Community Project approved and adopted by the City Council of the City of Garden Grove by Ordinance No. 1339, as amended by Ordinance Nos. 1388, 1476, 1548, 1576, 1642, 1699, 1760, 2035 and 2232; said ordinances and the Redevelopment Plan as so approved and amended.

“**Release of Construction Covenants**” means the document to be issued by the Successor Agency pursuant to the DDA evidencing completion of the Water Park Hotel.

“**Site**” is defined in Recital B.

“**Successor Agency**” is defined in Recital A.

“**TPM**” is defined in Recital D.

“**Transient Occupancy Tax Revenues**” means those revenues imposed and collected by the City with respect to the Water Park Hotel pursuant to Chapter 3.12 of Title 3 of the Garden Grove Municipal Code.

“**Water Park Hotel**” is defined in Recital C.

2. Development. GGMXD hereby covenants to complete or cause GWGG to complete construction of the Water Park Hotel in accordance with the Entitlements. In addition

to the specific requirements of the Entitlements, Construction Costs for the Water Park Hotel shall not be less than Two Hundred Sixty-Five Thousand Dollars (\$265,000) per room.

3. Opening and Operating Covenant. GGMXD hereby covenants and agrees for itself, its successors, assigns, and every successor in interest to the Water Park Hotel, to construct or cause GWGG to construct and Open for Business under the name “**Great Wolf,**” and to continuously use and operate and/or cause GWGG to continuously use and operate the Water Park Hotel for the entire period during which City Payments may be due pursuant to Section 4, in accordance with the following:

(a) The physical quality of the Water Park Hotel, including, without limitation, construction quality, finish material, lighting, landscaping and site amenities shall be comparable, at a minimum, to that achieved at Great Wolf Lodge Resort located in Grapevine, Texas, as of July 1, 2014.

(b) Following the issuance of the Release of Construction Covenants for the Water Park Hotel and thereafter, the repair and maintenance thereof shall remain comparable, in terms of quality and level of amenities of the Water Park Hotel, as existed as of the date of issuance of the Release of Construction Covenants and shall comply with the Recorded CC&Rs; provided the foregoing is not intended to require GGMXD to take or cause to be taken any action that might cause a violation of any recorded covenant, other contractual obligation, or any Governmental Requirement.

4. Consideration. Under the terms of the DDA, as Implemented, the Successor Agency is obligated, among other things, to pay to GGMXD the sum of Forty-Two Million Dollars (\$42,000,000) (the “**DDA Payment**”) thirty (30) days following the later to occur of the date on which (i) the Water Park Hotel Opens for Business, or (ii) the Certificate of Occupancy (as defined in the DDA) is issued for the Water Park Hotel (“**Condition Precedent to the DDA Payment**”). The date on which the Condition Precedent to the DDA Payment is fulfilled is referred to herein as the “**DDA Payment Date.**” The DDA, as Implemented further provides that the Successor Agency shall issue its tax allocation bonds to make the DDA Payment and, if the Successor Agency determines it will not be able to issue tax allocation bonds to make the DDA Payment, in full, the Successor Agency shall pay the balance of the DDA Payment not paid from the proceeds of the tax allocation bonds, plus interest at a rate equal to the yield of tax allocation bonds from Available Agency Revenues (defined in the Implementation Agreement as the “**Section 408.1(d) Payments**”). In Exhibit B of the Implementation Agreement, the parties approved the form of a Note to evidence the Successor Agency’s obligation to make the Section 408.1(d) Payments, if such obligation arises. Subject to the additional conditions precedent set forth below, the City shall, in consideration of the GGMXD’s covenants regarding the development and operation of the Water Park Hotel described in Sections 2 and 3 hereof, pay any deficiency in the amount of the Successor Agency’s payment on the Note (each such payment by the City is referred to as a “**City Payment**”). Each City Payment will be due and payable, if any payment is required hereunder, within thirty (30) days following the applicable Payment Date under the Note. In the event that the Successor Agency is prohibited from issuing the Note for any reason, then each City Payment shall be computed as though the Note were issued.

(a) Conditions Precedent to City Payments. The City's obligation to make the City Payments is expressly subject to the following conditions precedent:

(i) Condition Precedent to DDA Payment. The Condition Precedent to the DDA Payment has been fulfilled.

(ii) Available Agency Revenues. Available Agency Revenues are not available to make all required debt service payments under the Note for any reason.

(iii) Operation of Water Park Hotel. GGMXD shall have operated or caused the operation of the Water Park Hotel and the Water Park Hotel shall have been open for business continuously during the entire six (6) month period immediately preceding the applicable "**Payment Date**" under the Note (each such period is referred to herein as an "**Operating Period**").

(iv) Availability of Transient Occupancy Tax Revenues. The amount of each City Payment shall not exceed an amount measured by eighty percent (80%) of the Transient Occupancy Tax Revenues generated by the Water Park Hotel and actually collected by the City during the Operating Period immediately preceding the applicable City Payment. City makes no representation regarding the amount or continued existence of Transient Occupancy Tax Revenues, and shall be under no obligation to cause Transient Occupancy Tax Revenues to be levied in the City by the City.

(v) Appropriation by the City Council. City's obligation to make the City Payments coming due in each Fiscal Year shall be subject in all respects to the City Council's prior appropriation of funds to make the City Payments due in such Fiscal Year. City intends to make an annual appropriation as provided in the immediately preceding sentence and to make all City Payments required by this Agreement and City reasonably believes that an amount sufficient to make all City Payments can be obtained from legally available funds of City, but failure of the City Council to appropriate funds shall in no event constitute a breach of this Agreement.

(vi) Condition Precedent to DDA Payment. The City shall have no obligation to make any City Payment unless the following occurs: GGMXD is entitled to the DDA Payment pursuant to the DDA and the Successor Agency fails to make the DDA Payment or any portion thereof on or before the date such payment is due as required by the DDA, as Implemented. In the event the Condition Precedent to DDA Payment does not occur within the time required by the DDA, as Implemented, then this Agreement and the City's obligation to make any and all City Payments hereunder shall immediately terminate and be of no further force and effect.

(b) No Pledge. In no event shall the City Payments be secured by a pledge of, lien on or security interest in any funds or properties of the City, including the City's general fund revenues and including Transient Occupancy Tax Revenues.

5. Default. The failure of any party to perform an obligation hereunder (a "**Breach**"), following written notice of such Breach by the party claiming such Breach and

failure to commence to cure, correct or remedy such Breach within thirty (30) days following receipt of such written notice is a “**Default**” hereunder.

(a) Institution of Legal Actions. In the event a Default occurs, in addition to any other rights or remedies, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of Orange County, State of California.

(b) Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party.

(c) Waiver. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A waiver by either party of a Breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding Breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

(d) Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

(e) Non-Liability of City’s and Developer’s Officials and Employees. No member, official or employee of the City shall be personally liable hereunder, in the event of any default or breach by the City or for any amount which may become due to GGMXD or their successors or assigns on any obligations under the terms of this Agreement. No member, official or employee of GGMXD and/or each successor to any portion of the Site shall be personally liable hereunder, in the event of any default or breach by GGMXD or for any amount which may become due to the City or its successors, or on any obligations under the terms of this Agreement.

(f) Attorneys’ Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, each party shall bear its own attorneys’ fees.

6. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to any of the following (each an “**Enforced Delay**”): any “enforced delay” pursuant to the terms of the DDA; litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by

this Agreement; inability to secure necessary labor materials or tools; actions in connection with the remediation of Hazardous Materials, including groundwater contamination; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; unanticipated subsurface conditions that delay performance; lack of transportation; governmental restrictions or priority; building moratoria; unusually severe weather; acts or omissions of the other party; acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of the City which shall not excuse performance by the City); the pendency of any dispute between Agency and Developer, regarding Developer's construction obligations under the DDA; and/or as a result of Community Redevelopment Law, any Dissolution Act provisions or any other law in effect from time to time affecting the Agency and/or its ability to perform under the DDA. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period reasonably attributable to the Enforced Delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to commence and/or complete and/or operate the Project shall not constitute grounds of enforced delay pursuant to this Section 6.

7. GGMXD's Representations, Warranties and Covenants. GGMXD hereby confirms that the representations, warranties and covenants contained below are true, in all material respects, as of the Date of Agreement, and each shall survive the execution of this Agreement without limitation as to time.

(a) GGMXD is a duly organized Colorado corporation in good standing under the laws of the State of Colorado. GGMXD hereby represents and warrants that GGWG is Delaware limited liability company in good standing under the laws of Delaware and in good standing and authorized to carry on business in California as such business is now conducted and to own and operate properties and assets now owned and being operated by it, and as set forth in and anticipated by this Agreement. GGMXD has full right, power and lawful authority to enter into this Agreement and the execution and delivery of this Agreement by GGMXD has been fully authorized by all requisite actions on the part of GGMXD. GGMXD has provided the City with true and correct copies of documentation reasonably acceptable to the City Manager, or his/her designee, designating the parties authorized to execute this Agreement on behalf of GGMXD.

(b) GGMXD's execution, delivery and performance of its obligations under this Agreement will not violate any applicable laws, regulations, or rules nor to the best of GGMXD's knowledge after due inquiry, will it constitute a breach or default under any contract, agreement, or instrument to which GGMXD is a party, or any judicial or regulatory decree or order to which GGMXD is a party or by which it may be bound.

(c) GGMXD has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for them or any substantial part of its property, or

commenced any proceeding relating to GGMXD under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against GGMXD any proceeding of the nature described in the first sentence of this subsection (c). No order for relief has been entered with respect to GGMXD under the Federal Bankruptcy Code.

(d) All documents, instruments, and other information delivered by GGMXD to the City pursuant to this Agreement are, to the best of GGMXD's knowledge, true, accurate, correct and complete.

(e) This Agreement and all documents to be delivered by GGMXD pursuant to this Agreement, when executed by GGMXD and delivered, shall constitute the legal, valid and binding obligation of GGMXD. No consent, approval, or authorization of any third person to GGMXD's execution, delivery, and performance of this Agreement is required, other than consents, approvals, and authorizations which have already been unconditionally given.

(f) GGMXD shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 7 not to be true, immediately give written notice of such fact or conditions to the City.

Each of the foregoing items (a) to (f), inclusive, shall be deemed to be ongoing representations, warranties and covenants.

8. Prevailing Wages. With respect to the construction of the Project set forth herein, Developer and its contractors and subcontractors shall pay or cause GWGG and its contractors and subcontractors to pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto (collectively, "**Labor Laws**"). Such requirements are set forth in greater detail in Exhibit C to the DDA. Upon the periodic request of the City, the Developer shall certify to the City that it is in compliance with the requirements of this Section 8. Developer shall indemnify, protect, defend and hold harmless the City and its officers, directors, employees, contractors, subcontractors, agents, representatives and volunteers (collectively, the "**Indemnitees**"), with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from the noncompliance by GGMXD, GGMXDR and/or GWGG of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the Labor Laws). It is agreed by the parties that, in connection with the development of the Project, including, without limitation, any and all public works (as defined by applicable law), GGMXD, GGMXDR and/or GWGG, as applicable, shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 8, shall have the meaning

ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Project.

9. Developer Indemnities. Developer hereby agrees and hereby shall indemnify, protect, defend and hold harmless the Indemnitees from and against any and all liabilities, claims, suits or actions of every name, kind and description, arising from, related in any respect to, or as a result of a violation of Governmental Requirements; provided, that none of the same were directly and proximately caused by the Indemnitees. Developer shall further indemnify, protect, defend and hold harmless the Indemnitees from and against any and all liabilities, claims, suits or actions of every name, kind and description, brought to challenge the legality, enforceability or approval of this Agreement or as a result of or relating to performance of GGMXD's obligations under this Agreement, whether such performance is by GGMXD or a third party acting on behalf of or any person directly or indirectly employed by or acting as agent for GGMXD in the performance of this Agreement, except that such indemnity shall not apply to the extent such matters are caused by the gross negligence or willful misconduct of the Indemnitees. It is understood that the duty of GGMXD to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

10. Termination of Agreement. This Agreement shall terminate and be of no further force and effect upon the earlier to occur of the following:

(a) The satisfaction in full of the entire DDA Payment, whether through the issuance of Tax Allocation Bonds, payment in full of the Note, payment in full of the Section 408.1(d) Payments, or payment of all City Payments required hereunder, or any combination of the foregoing;

(b) The prepayment of all Successor Agency payment obligations under Section 408.1(d) of the DDA; or

(c) Failure of the Condition Precedent for DDA Payment to occur within the time set forth in the DDA, as Implemented.

11. General Provisions.

(a) Notices, Demands and Communications Between the Parties. All notices, statements, demands, requests, consents, approvals, disapprovals, demands or other notices ("**Notice**") which either party may desire to give to the other party under this Agreement shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and in any such instance addressed (or delivered, as the case may be) at the address of the party as set forth below, or at any other address as that party may later designate by Notice:

To City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

with a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.

To Developer: McWhinney Real Estate Services
2725 Rocky Mountain Avenue, Suite 200
Loveland, Colorado 80538
Attention: Doug Hill

with a copy to: Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, California 90071
Attention: Anna Rienhardt

Any written notice, demand or communication shall be deemed received immediately if delivered by hand (personally or by document delivery service specified above) and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

(b) Covenants Run with the Land. This Agreement and the covenants set forth herein shall run with the land and be binding on each and every successor in interest to the Water Park Hotel.

(c) Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon GGMXD and its permitted successors and assigns. Whenever the term "GGMXD" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

(d) Limited Assignments. Notwithstanding any other provision of this Agreement to the contrary, the City approval of an assignment of this Agreement (or any portion thereof), shall not be required in connection with any collateral assignment of the City Payments for purposes of borrowing money to be used solely on the Water Park Hotel, replenishing equity contributed solely to the Water Park Hotel or to refinance any construction or other financing related solely to the Water Park Hotel.

(e) Relationship between City and GGMXD. It is hereby acknowledged that the relationship between the City and GGMXD is not that of a partnership or joint venture and that the City and GGMXD shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. GGMXD agrees to indemnify, protect, defend and hold harmless the City from any claim made against the City arising from a claimed relationship of partnership or

joint venture between the City and GGMXD with respect to the development, operation, maintenance or management of the Site or the Project.

(f) City Approvals and Actions. The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager (or his duly authorized representative). The City Manager shall have the administrative authority to make approvals, issue interpretations, waive provisions, and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted on the Site, or add to the costs incurred or to be incurred by the City as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

(g) Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

(h) Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

(i) Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to Section numbers are to sections in this Agreement, unless expressly stated otherwise. This Agreement shall be interpreted as though prepared jointly by both parties.

(j) Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

(k) Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents,

employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

(l) Time of Essence. Time is expressly made of the essence with respect to the performance by the City and GGMXD of each and every obligation and condition of this Agreement.

(m) Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

(n) Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

(o) Time for Acceptance of Agreement by City. This Agreement, when executed by GGMXD and delivered to the City, must be authorized, executed and delivered by the City on or before sixty (60) days after signing and delivery of this Agreement by GGMXD or this Agreement shall be void, except to the extent that GGMXD shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

(p) No Warranty or Representation by City re Enforceability. The City makes no warranty or representation regarding the enforceability of the City's obligations under this Agreement under applicable state or federal law.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

CITY:

CITY OF GARDEN GROVE, a California corporation

Dated: _____, 2014

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Thomas P. Clark, Jr.

DEVELOPER:

GARDEN GROVE MXD, INC.,
a Colorado corporation

Dated: _____, 2014

By: _____
Douglas L. Hill
Executive Vice President

EXHIBIT "A"
LEGAL DESCRIPTION
PARCEL MAP NO. 2010-118

ALL OF PARCEL 1, 2 AND 3 OF PARCEL MAP NO. 2010-118, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 376, PAGES 12 THROUGH 15 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

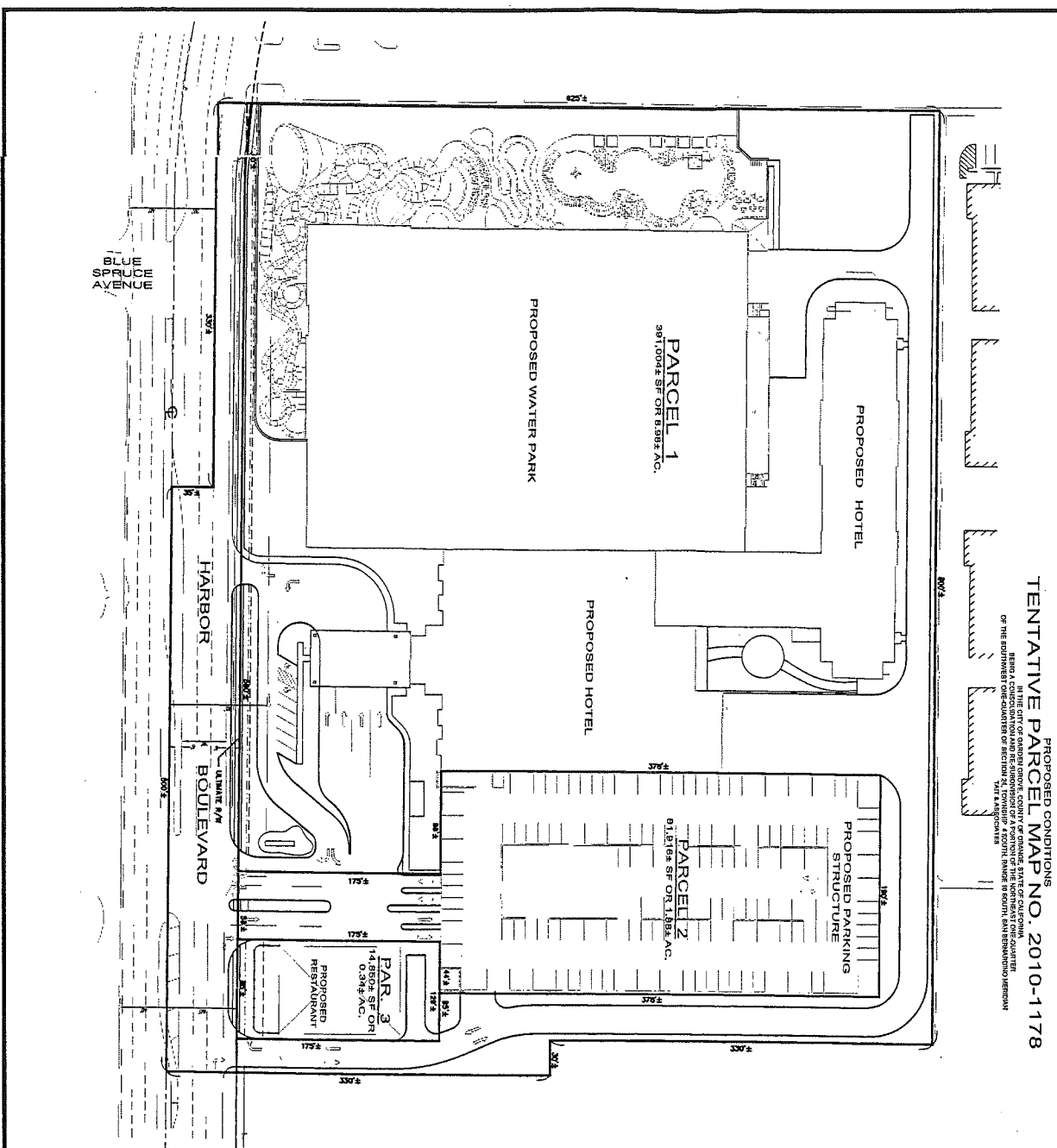
ALL OF PARCEL 1 OF PARCEL MAP NO. 2010-118, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 376, PAGES 12 THROUGH 15 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALL OF PARCEL 2 OF PARCEL MAP NO. 2010-118, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 376, PAGES 12 THROUGH 15 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

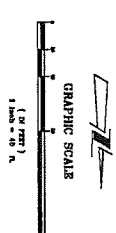
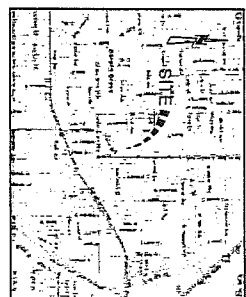
ALL OF PARCEL 3 OF PARCEL MAP NO. 2010-118, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 376, PAGES 12 THROUGH 15 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

SITE MAP



TENTATIVE PARCEL MAP NO. 2010-1-178
 BEING A CONSOLIDATION AND THE SUBDIVISION OF A PORTION OF THE NORTHEAST ONE-QUARTER
 OF THE SOUTHWEST ONE-QUARTER OF SECTION 34, T4S, R4E, S4M, SDMP



PROJECT INFORMATION	TAIT & ASSOCIATES, INC. 7501 N. Parkcenter Drive San Jose, CA 95128 TEL: (415) 555-4211 WWW.TAIT.COM
OWNER	1. GARDEN GROVE PARTNERS FOR COMMUNITY DEVELOPMENT (GCP) 2. GARDEN GROVE PARTNERS FOR COMMUNITY DEVELOPMENT (GCP) 3. GARDEN GROVE PARTNERS FOR COMMUNITY DEVELOPMENT (GCP)
ADJACENT PARCEL NUMBER	12201-12202 LEDA LANE AND 12201, 12202, 12221 HARBOR BOULEVARD GARDEN GROVE, CALIFORNIA 92540
ADJACENT	12201-12202 LEDA LANE AND 12201, 12202, 12221 HARBOR BOULEVARD GARDEN GROVE, CALIFORNIA 92540
PROJECT DESCRIPTION	PROPOSED WATER PARK, PROPOSED HOTEL STRUCTURE, PROPOSED RESTAURANT, PROPOSED PARKING LOT, PROPOSED DRIVEWAY, PROPOSED SIDEWALK, PROPOSED LANDSCAPE, PROPOSED UTILITY, PROPOSED SIGNAGE, PROPOSED FENCE, PROPOSED LIGHTING, PROPOSED SECURITY, PROPOSED MAINTENANCE, PROPOSED STORAGE, PROPOSED OFFICE, PROPOSED GARAGE, PROPOSED DRIVEWAY, PROPOSED SIDEWALK, PROPOSED LANDSCAPE, PROPOSED UTILITY, PROPOSED SIGNAGE, PROPOSED FENCE, PROPOSED LIGHTING, PROPOSED SECURITY, PROPOSED MAINTENANCE, PROPOSED STORAGE, PROPOSED OFFICE, PROPOSED GARAGE
PROPOSED ZONING	RPD 12.1 (RESIDENTIAL PLANNING DISTRICT)
PROPOSED LOT USE	WATER PARK, HOTEL, RESTAURANT, PARKING LOT, DRIVEWAY, SIDEWALK, LANDSCAPE, UTILITY, SIGNAGE, FENCE, LIGHTING, SECURITY, MAINTENANCE, STORAGE, OFFICE, GARAGE
PROPOSED UNIT NUMBER	PARCEL 1, PARCEL 2, PARCEL 3

NOTE:
 PROPERTY DIMENSIONS ARE SUBJECT TO FUTURE
 RECONSTRUCTION AND/OR CHANGES FOR ACCESS,
 PARKING, DRAINAGE, UTILITIES AND MAINTENANCE.

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by DOUGLAS L. HILL, as Chief Operating Officer of MCWHINNEY REAL ESTATE SERVICES, INC., a Colorado corporation, as Executive Vice President of GARDEN GROVE MXD, LLC, a Colorado corporation.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

**SUMMARY REPORT PURSUANT TO
 CALIFORNIA GOVERNMENT CODE SECTION 53083
 ON AN AGREEMENT
 RE DEVELOPMENT AND OPERATING COVENANTS
 BY AND BETWEEN
 THE CITY OF GARDEN GROVE AND
 GARDEN GROVE MXD, INC.**

The following Summary Report has been prepared pursuant to California Government Code Section 53083. The report sets forth certain details of the proposed Agreement Re: Development and Operating Covenants (Agreement) between the following parties:

1. The City of Garden Grove (City);
2. Garden Grove MXD, Inc., a Colorado corporation (Developer).

This summary report considers only the proposed Agreement. The purpose of this Agreement is to effectuate economic development in the City.

The following Summary Report is based upon the information contained within the Agreement, and is organized into the following seven sections:

- I. Identity of the Developer:** This section provides the name and address of the Developer.
- II. Salient Points of the Agreement Re Development and Operating Costs (the "Agreement"):** This section summarizes the major responsibilities imposed on Developer and the City by the Agreement.
- III. Economic Incentives Provided and Cost of the Agreement:** This section details the economic incentives provided and the costs incurred by the City to implement the Agreement.
- IV. Consideration Received and Comparison with the Economic Incentives Provided:** This section describes the financial compensation to be received by the City.
- V. Creation of Economic Opportunity and Public Purpose:** This section explains how the Agreement will assist in creating economic opportunity in the City.
- VI. Job Creation:** This section describes the number of full-time, part-time and temporary jobs created under the Agreement. This report and the Agreement are to be made available for public inspection prior to the approval of the Agreement.

I. Identity of Developer

McWhinney Real Estate Services
2725 Rocky Mountain Avenue, Suite 200
Loveland, Colorado 80538
Attention: Doug Hill

II. Salient Points of the Agreement

A. Project Description

The Agreement requires the City to acquire a development and an operating covenant (Covenant) to facilitate the development and operation of a facility comprised of a water park hotel consisting of an approximately 603 room hotel and an approximately 3-acre water park (“Water Park Hotel”) as well as approximately 40,000 square feet of retail, restaurants and entertainment uses and related parking (together with the Water Park Hotel, the “Project”).

The initial phase of the Project is more specifically described in the Construction Drawings and related permit for the foundations and underground construction, as approved by the City on February 28, 2014 (“Initial Construction Drawings”) and the Planned Unit Development No. PUD 126-10 previously approved by the City pursuant to Ordinance No. 2789 (“PUD”). The City has also approved General Plan Amendment GPA 1-10(A) (“GPA”), Development Agreement No. DA-183-10 (“DA”) and a Mitigated Negative Declaration and Mitigation Monitoring Program for the Project pursuant to City Resolution No. 9028-11 (“MND”). The Planning Commission has approved Conditional Use Permit No. CUP-303-10 (“CUP”) and Tentative Parcel Map No. PM-2010-1178 (“TPM”).

In addition, the Developer and the Garden Grove Agency for Community Development (succeeded by the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development (“Successor Agency”) pursuant to Health & Safety Code Section 34161 et seq.), entered into that certain First Amended and Restated Development and Disposition Agreement dated April 13, 2010 (“DDA”) as the same has been assigned in part to GGMXDR, Inc., a Colorado corporation (“GGMXDR”) and GWGG, LLC, a Delaware limited liability company (“GWGG”). GGMXD and Successor Agency entered into that certain Implementation Agreement dated October 8, 2013 to implement the DDA (“Implementation Agreement”). The DDA and Implementation Agreement are sometimes collectively referred to herein as the “DDA, as Implemented.” The DDA, as Implemented, Initial Construction Drawings, GPA, CUP, PUD, DA, and MND are collectively referred to herein as the “Entitlements.”

B. Developer Responsibilities

1. Developer covenants to complete or cause the completion of construction of the Water Park Hotel in accordance with the Entitlements and open and

operate same under the business name "Great Wolf." In addition to the specific requirements of the Entitlements, Construction Costs for the Water Park Hotel shall not be less than Two Hundred Sixty-Five Thousand Dollars (\$265,000) per room. Developer further covenants to continuous use and operation of the Water Park Hotel for the entire period during which City Payments may be due pursuant to Section 4 of the Agreement, in accordance with the following:

- (a) The physical quality of the Water Park Hotel, including, without limitation, construction quality, finish material, lighting, landscaping and site amenities shall be comparable, at a minimum, to that achieved at Great Wolf Lodge Resort located in Grapevine, Texas, as of July 1, 2014.
- (b) Following the issuance of the Release of Construction Covenants (as defined in the DDA, as Implemented) for the Water Park Hotel and thereafter, the repair and maintenance thereof shall remain comparable, in terms of quality and level of amenities of the Water Park Hotel, as existed as of the date of issuance of the Release of Construction Covenants and shall comply with the Recorded CC&Rs.

C. City Responsibilities

The Agreement imposes the following responsibilities on the City:

1. Under the terms of the DDA, as Implemented, the Successor Agency is obligated, among other things, to pay to GGMXD the sum of Forty-Two Million Dollars (\$42,000,000) (the "DDA Payment") thirty (30) days following the later to occur of the date on which (i) the Water Park Hotel Opens for Business, or (ii) the Certificate of Occupancy (as defined in the DDA) is issued for the Water Park Hotel ("Condition Precedent to the DDA Payment"). The date on which the Condition Precedent to the DDA Payment is fulfilled is referred to in the Agreement as the "DDA Payment Date." The DDA, as Implemented further provides that the Successor Agency shall issue its tax allocation bonds to make the DDA Payment and, if the Successor Agency determines it will not be able to issue tax allocation bonds to make the DDA Payment, in full, the Successor Agency shall pay the balance of the DDA Payment not paid from the proceeds of the tax allocation bonds, plus interest at a rate equal to the yield of tax allocation bonds from Available Agency Revenues (defined in the Implementation Agreement as the "Section 408.1(d) Payments"). In Exhibit B of the Implementation Agreement, the parties approved the form of a Note to evidence the Successor Agency's obligation to make the Section 408.1(d) Payments, if such obligation arises. Subject to the additional conditions precedent set forth in the Agreement, the City shall, in consideration of the Developer's covenants regarding the development and operation of the Water Park Hotel described above, pay any deficiency in the amount of the Successor Agency's payment on the Note but

only if and to the extent the Water Park Hotel generates transient occupancy tax (each such payment by the City is referred to as a "City Payment"). Each City Payment will be due and payable, if any payment is required hereunder, within thirty (30) days following the applicable Payment Date under the Note. In the event that the Successor Agency is prohibited from issuing the Note by the Oversight Board, the California Department of Finance or a court of competent jurisdiction, then each City Payment shall be computed as though the Note were issued.

III. Economic Incentives Provided and Cost of the Agreement

City is making an economic incentive payment to induce Developer to develop and operate the Water Park Hotel in Garden Grove. The cost to incurred by the City is contingent but could be as much as Forty-Two Million Dollars (\$42,000,000) paid over a period of 20 years.

IV. Consideration received and Comparison with the Economic Incentives Provided

The City expects to receive a portion of the property tax revenues generated by the Water Park Hotel as well as sales tax and transient occupancy tax. As of fiscal year in which the Agency acquired the Property the assessed value was \$80,500. The estimated improvement costs for the Water Park Hotel are approximately \$285.4 million, which is expected to result in an assessed value of approximately \$2.854 million, an increase of more than 15%.

In addition to the property tax generated and allocated to the various taxing jurisdictions, the enhanced Water Park Hotel will generate substantial transient occupancy tax and sales tax revenues for the City. Table 1 provides a projection of the potential gross revenues and taxable transactions that could result from the operation of the Water Park Hotel. Assuming that the Water Park Hotel is open for business before the end of 2015, then the first full year of operations is 2016.

Table 2 provides a projection of transient occupancy tax revenues.

V. Creation of Economic Opportunity and Public Purpose

Other important goals and objectives that are satisfied by the Project area:

1. Increased employment through additional jobs created as a result of private sector investment.
2. Potential increase in private investment as a result of the public investment in this project.

VI. Job Creation

The Project is projected to create the following number of temporary jobs during construction, and full-time and part-time jobs during operation. It is estimated that 800 to 1,000 temporary construction jobs will be created during the eighteen to twenty month construction period.

Upon completion of the Water Park Hotel, full time employment is expected to be approximately 600 employees.

TABLE 1
SALES TAX REVENUES

City of Garden Grove Estimated Sales Taxes							
Period	Water Park Projected Sales			Retail⁽³⁾	Parking⁽³⁾	Total Sales	1% Sales Tax
	Room Sales	F&B⁽¹⁾	Other⁽²⁾				
2016	\$51,339,513	\$12,388,000	\$4,487,598	\$5,950,000	\$2,479,126	\$76,644,237	\$766,442
2017	59,762,967	14,499,000	5,223,893	6,128,500	2,553,500	88,167,860	881,679
2018	61,555,856	15,361,879	5,380,610	6,312,355	2,630,105	91,240,806	912,408
2019	63,402,532	15,822,736	5,542,029	6,501,726	2,709,008	93,978,030	939,780
2020	65,304,608	16,297,418	5,708,289	6,696,777	2,790,278	96,797,371	967,974
2021	67,263,746	16,786,340	5,879,538	6,897,681	2,873,987	99,701,292	997,013
2022	69,281,658	17,289,931	6,055,924	7,104,611	2,960,206	102,692,331	1,026,923
2023	71,360,108	17,808,629	6,237,602	7,317,749	3,049,013	105,773,100	1,057,731
2024	73,500,911	18,342,887	6,424,730	7,537,282	3,140,483	108,946,293	1,089,463
Total							8,639,413

1. Gross water park food & beverage sales.
2. According to Great Wolf, approximately 50% of their "other" sales are considered taxable.
3. Estimated retail and parking gross sales for lease space and garage, provided by the developer.

Source: HorwathHL

Note: The financial projections and investment analysis presented herein contain estimates and assumptions based on information provided to Horwath by the City of Garden Grove, our knowledge of the Garden Grove hotel supply and current market conditions. Horwath Hospitality & Leisure LLC neither warrants nor guarantees these projections and analyses since unanticipated events may occur, and actual results may be materially affected.

TABLE 2
TRANSIENT OCCUPANCY TAX REVENUES

Transient Occupancy Tax Projections		
	Water Park Hotel	
Period⁽¹⁾	Projected Room Revenue⁽²⁾	Projected TOT⁽³⁾
2016	\$51,339,513	\$7,444,229
2017	59,762,967	8,665,630
2018	61,555,856	8,925,599
2019	63,402,532	9,193,367
2020	65,304,608	9,469,168
2021	67,263,746	9,753,243
2022	69,281,658	10,045,840
2023	71,360,108	10,347,216
2024	73,500,911	10,657,632
	Total	\$84,501,925

1. Assuming full operating years of payments from proposed water park hotel.
2. Average daily rate increased 3% from 2015 estimate and thereafter to account for inflation.
3. Transient occupancy tax to city at 14.5% of room revenue.

Source: HorwathHL

Note: The financial projections and investment analysis presented herein contain estimates and assumptions based on information provided to Horwath by the City of Garden Grove, our knowledge of the Garden Grove hotel supply and current market conditions. Horwath Hospitality & Leisure LLC neither warrants nor guarantees these projections and analyses since unanticipated events may occur, and actual results may be materially affected.